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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/334,424	06/16/1999	YASUTOMO NISHINA	450100-4916	5326
20999 7590 01/29/2008 FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			EXAMINER SALCE, JASON P	
			ART UNIT 2623	PAPER NUMBER
			MAIL DATE 01/29/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

09/334,424

Examiner

Jason P. Salce

Applicant(s)

NISHINA ET AL.

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 11 October 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: see continuation sheet.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.

JASON SALCE
PRIMARY PATENT EXAMINER
Jason Salce
1/29/08

Continuation of Item 4 of Non-Responsive Amendment Notice

Continued Examination Under 37 CFR 1.114

Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on 10/31/2007. The submission, however, **is not fully responsive** to the prior Office action because see below. Since the submission appears to be a bona fide attempt to provide a complete reply to the prior Office action, applicant is given a shortened statutory period of **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period for reply supersedes the time period set in the prior Office action. Since this application has been granted special status under the accelerated examination program, **NO** extensions of time under 37 CFR 1.136(a) will be permitted.

Election/Restrictions

Newly submitted claims 29-43 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 29-35 are directed toward a system comprising a transmitter that contains a scheduling database that allocates occupation bandwidth for video, audio and EPG data and a controller for controlling the data output rate among the video, audio and EPG data in each occupational area of the transmission bandwidth in addition to a corresponding receiver for receiving and decoded the video, audio and EPG transmitted over the transmission network from said transmitter.

Claims 36-43 are directed toward a system comprising a transmitter that receives program information containing transmission status information and controlling how the video, audio and program information are multiplexed and a receiver for receiving the multiplexed information.

The previous set of claims were directed to a system comprising a transmitter for controlling a multiplexing ratio and re-transmission cycle in order to receive video, audio and program information in a reduced period of time.

The two sets of claims (regarded as two separate inventions) in addition to the originally presented claims are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination are separately usable.

As such claims 29-35, the system can be used in an ATM network for providing a specified quality of service based on how the video, audio and EPG data occupy the bandwidth and how the data output rate is controlled.

Claims 36-43 can be used in an IPTV system for multiplexing IP traffic based on transmission status.

The previous set of claims can be used in an interactive television network (coaxial cable network) for controlling how audio, video and program information data can be transmitted and received by a television set-top box in a reduced period of time.

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 29-43 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. **The response has been found non-responsive because this election has been applied to all pending claims and therefore no action can be taken. Note that the MPEP clearly states, “Presentation of claims for different invention - Applicants cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch inventions). See 37 CFR 1.145. If an RCE is filed with an amendment canceling all claims drawn to the elected invention and presenting only claims drawn to a nonelected invention, the RCE should be treated as a proper RCE but the amendment should not be**

entered. The amendment is not fully responsive and applicant should be given a time period of one month or thirty days (whichever is longer) to submit a complete reply. See MPEP § 821.03. Form paragraphs 8.04 or 8.26 should be used as appropriate. If Applicant feels that the response is the same invention previously claimed, Applicant must explain how the newly submitted claim set is the same invention previously prosecuted by the examiner.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason P Salce
Primary Examiner
Art Unit 2623

January 5, 2008